

Arizona Racing Commission

627th Regular Meeting

Wednesday, May 28, 2014

MINUTES OF REGULAR MEETING

A public meeting of the Arizona Racing Commission was convened on Wednesday, May 28, 2014, beginning at 10:03 a.m. in the Building Conference Room, Suite 250, at 1110 West Washington Street, Phoenix, Arizona 85007.

PRESENT:	Chairman	Erin Owens
	Vice Chairman	Jay McClintock
	Commissioner	Rory S. Goree'
	Commissioner	Bill Feldmeier - Absent
	Commissioner	Tom Lawless

Also Present: Director William Walsh, Assistant Attorney General, Mary D. Williams, Solicitor General Representative, Assistant Attorney General, Christopher Munns, (for New Business #1 only)

A. Call to Order

Chair Owens called the 627th Regular Meeting of the Arizona Racing Commission to order at 10:03 a.m. The following matters were discussed, considered and decided at the meeting:

Approval of the Minutes:

Minutes of the 625th Regular Commission Meeting held on Wednesday, February 18, 2014. **Chair Owens** called for a motion to approve the minutes. **Vice Chair McClintock** moved for approval. **Commissioner Goree'** seconded the motion. Motion carried.

Minutes of the Executive Session #1 held on Wednesday, February 18, 2014. **Chair Owens** called for a motion to approve the minutes. **Commissioner Goree'** moved for approval. **Vice Chair McClintock** seconded the motion. Motion carried.

Minutes of the Executive Session #2 held on Wednesday, February 18, 2014. **Chair Owens** called for a motion to approve the minutes. **Commissioner Goree'** moved for approval. **Vice Chair McClintock** seconded the motion. Motion carried.

Minutes of the 626th Regular Meeting held on Wednesday, March 12, 2014. **Chair Owens** called for a motion to approve the minutes. **Commissioner Goree'** moved for approval. **Vice Chair McClintock** seconded the motion. Motion carried.

Minutes of the Special Telephonic Meeting held on Wednesday, April 16, 2014. **Chair Owens** called for a motion to approve the minutes. **Vice Chair McClintock** moved for approval. **Commissioner Goree'** seconded the motion. Motion carried.

B. New Business

1. Appeal of Director's Order – Appellant Douglas J. Chapman case No. 14A-014-RAC. Attorney Ivy L. Kushner appeared on behalf of her client, **Douglas J. Chapman** to appeal a

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Director's Order reference case No. 14A-014-RAC. The Director's Order upheld the Administrative Law Judge's Recommendation.

Mary D. Williams, Assistant Attorney General, representing the State. **Ms. Williams** supports the Department's decision.

Christopher Munns, Assistant Attorney General, Solicitor General's Office, legal advisor to the Commissioners.

Attorney Ivy K. Kushner stated she representing her client, Douglas J. Chapman, in an appeal to the Director's Order, the license denial of Douglas Chapman. She had also wished to analyze the propriety of the denial and she cited a portion of ARS section 5-1085, "the Department shall refuse to issue or renew a license or the Commission shall refuse to renew a permit for any applicant if there is substantial evidence to find the applicant an individual has been convicted within the last five years of the felony or crime or involving moral turpitude." Ms. Kushner stated Mr. Chapman's license had been summarily suspended on April 5, 2008 following his arrest in February of 2008 for distribution of marijuana. She did not explain or excuse Mr. Chapman's conduct but she stated his behaviors lead to a felony conviction entered on August 2008 and he had been placed on three years' probation which included drug testing. She stated he had been released early from probation on September 3, 2010. Ms. Kusher further explained that Mr. Chapman had no prior criminal history and in confirmation of his subsequent good moral character has had no subsequent criminal history. In September of 2013, more than the five years after the conviction he applied for a trainer's license and the application was denied by the Stewards in October of 2013. There had been a subsequent appeal and the decision of the Stewards was affirmed. Ms. Kushner asked that the Commission reverse or modify that decision.

Assistant Attorney General, Mary D. Williams appeared on the behalf of the Department in this matter. Ms. Williams stated that the record the Commissioners' had before them supported the Department's decision to deny Mr. Chapman a license. Ms. Williams explained that Mr. Chapman had the burden at the hearing that had been held to prove that he was qualified to hold the license, the Administrative Law Judge who heard the case found that he did not meet that burden and the Director accepted that finding. The Department had discretion and had to consider Mr. Chapman's entire licensing history. Ms. Williams stated this case did not turn on how many years Mr. Chapman had been free from drugs, that was one factor, but the Department had to consider all of the evidence and determine if he would be qualified to hold a license and the Department determined he was not. Ms. Williams stated that Mr. Chapman received due process in this matter. She said he applied for a license and the Department determined he wasn't qualified, therefore the Department denied him a license. Ms. Williams stated that Mr. Chapman had exercised his rights given to him under the law, he asked for a hearing and he received his hearing and he was found not to have met his burden. Ms. Williams concluded there were no issues for any denial of due process and her recommendation to the Commission is to affirm the Director's decision.

Attorney, Ivy K. Kushner questioned why Ms. Williams had not explained the legislative intent of the five year parameter and why it would apply in this case. Ms. Kushner stated she was not disputing that the department had vested its discretionary authority but she questioned why, based on Mr. Chapman's history. Ms. Kushner explained that Mr. Chapman has demonstrated by proof of his conduct since his bad judgment that, he has become a law abiding citizen and New Mexico had issued him a license. Ms. Kushner stated it was an abuse of discretion to continue to penalize Mr.

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Chapman after the expiration of the five years. Ms. Kushner respectfully requested the Commission reverse or modify the denial due to the facts subsequent to the bad behavior.

Chair Owens opened the floor for discussion.

Vice Chair McClintock asked if it were appropriate to hear from the Director.

Solicitor General Chris Munns replied, no, to Vice Chair McClintock's question and told him the lawyers could speak to the Commission and he may ask questions to Ms. Williams as to the rational.

Vice Chair McClintock stated he had mixed emotions. He said he would like to give someone a second chance after six years of being clean and that there must have been good reason to turn him down. He stated he would like to have more information as to why Mr. Chapman had been denied.

Assistant Attorney General, Mary D. Williams stated the decision had been based on the Administrative Law Judge's findings and that the judge had taken into consideration Mr. Chapman's recent history. Ms. Williams explained that the Legislature has granted the Director the authority to consider past violations, past felony convictions even if it is over the five years. She further explained that the Department has an interest in keeping the industry free of any potential drug activity. She stated that Mr. Chapman does have a history and he had engaged in conduct that would disqualify him from holding a license. Ms. Williams explained that each state has its own statues and rules. Ms. Williams stated the Director appropriately applied them.

Commissioner Lawless stated he was in agreement with Vice Chair McClintock in the belief of rehabilitation. **Commissioner Lawless** asked Ms. Williams if the Commission could by law give Mr. Chapman a conditional permit requiring drug testing at his expense.

Assistant Attorney General, Mary D. Williams replied to Commissioner Lawless that he may defer his question to Solicitor General, Christopher Munns.

Solicitor General, Christopher Munns replied by stating the Commission could if it was authorized within your state statutes. He was uncertain as to how the section applied to conditional permits.

Assistant Attorney General, Mary D. Williams, explained an agreement could be offered to Mr. Chapman such as the one that was on the record in 2004, but there was not a statute that would apply to a conditional license and there was not any statute that had a time limit for Mr. Chapman. Mr. Chapman would be able to come back as soon as he wanted to apply, but it would not mean that he would get one.

Attorney, Ivy K. Kushner, mentioned that in her closing remarks during the administrative hearing she had indicated as part of an agreement to license Mr. Chapman, he would be willing to submit and sign a drug agreement or whatever the Department would prescribe.

Commissioner Lawless asked if the drug agreement could include a year around check and if New Mexico would be willing to share the results.

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Solicitor General, Christopher Munns replied it would actually be a separate order from a modification and it would have to be a consent agreement process. He explained the Commission could only order or grant a denial of a license unless there is a consent agreement signed by both of the parties.

Assistant Attorney General, Mary D. Williams stated the Department would be in agreement as long as the Department could feel confident that Mr. Chapman would be monitored and that there would be no issues.

Chair Owens asked if there could be any stipulations in the consent agreement or would it be something separate whether or not the Commission decided to modify or not.

Solicitor General, Christopher Munns replied that the parties could discuss a consent agreement or they may want to table this matter until the next meeting. He stated that details needed to be worked out and that there would be findings of fact and conclusions of law with the stipulations in them. He felt uncertain as to the parties currently being in agreement.

Attorney, Ivy K. Kushner asked if she and Ms. Williams could take ten minutes to walk out and see if they could talk so it wouldn't need to put back on an agenda.

Solicitor General, Christopher Munns stated the Commissioners should authorize any agreement because the parties' agreements may be written down on paper differently and issues could arise regarding what was agreed upon and what the commission accepted. **Mr. Munns** recommended it would be best to have a full agreement to look at so no one would be able to say they did not agree to it.

Attorney, Ivy K. Kushner was in agreement and withdrew her comment.

Chair Owens asked if anyone had any further comments. She called for a motion based on the information given to the Commission.

Commissioner Lawless stated he would agree to table the decision until the next meeting and allow the parties to attempt to enter into a consent agreement that would be satisfactory to both parties.

Commissioner Goree' seconded the motion

Assistant Attorney General, Mary D. Williams asked about the timing so certification would not take place at the Office of Administrative Hearings.

Solicitor General, Christopher Munns replied that it would not be a factor because the Director had been the one that had the deadline. The Commission was free of any timeline.

Chair Owens stated that there was a motion on the floor to table the current hearing and allowing the parties to go into a consent agreement that would be heard at a future commission meeting. The motion passed unanimously.

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2. Award of Annual Adoption Grants

Chair Owens asked Director Walsh to update the Commission on awarding the annual adoption grants.

Director Walsh stated that on an annual basis the Department recommends to the Commission grants to various people in the industry regarding the retired greyhound and the retired horses. Director Walsh asked Dr. Scot Waterman to report on those recommendations.

Dr. Scot Waterman reported he reviewed the grants that had been submitted to the Department. He explained how the Department collects industry money and distributes to organizations that meet the criteria. **Dr. Waterman** said Greyhound Pets of Arizona submitted a complete application. **Dr. Waterman** stated they have done a terrific job in getting dogs adopted and they also take in dogs that are injured on the track. He said often times it is difficult to find organizations that are willing to take in an injured dog. The total pool of money for the greyhounds is \$1,350 and Dr. Waterman had recommended Greyhound Pets of Arizona receive the entire amount. On the horse side of racing two grants were submitted, one from Equine Encore Foundation and the other from Cantor Arizona. Dr. Waterman stated that for the last three years he has been reviewing grants and these two applicants have been consistent in those three years so his recommendation would be to divide the money equally between the two organizations. The pool of money for the horses was \$1,955 and when divided would be \$977.50 for each of the applicants.

Chair Owens stated that this would require two motions.

Dr. Scot Waterman stated he would like to have on record that he congratulated Equine Encore Foundation for going through the thoroughbred aftercare alliance certification process this past year and that he himself had been a part of the team for the site inspection. He explained it is an arduous process to be a recipient of this accreditation. The Equine Encore Foundation went through this process so they could be recognized as one of the leading aftercare facility for horses. Dr. Waterman congratulated them for receiving the recognition.

Chair Owens asked if anyone from any of the three organizations would like to speak or have anything to add.

Patti Shirley, Executive Director of Equine Encore Foundation, thanked Dr. Waterman and agreed with Dr. Waterman that the process was arduous but well worth it. She was happy for the recognition and for the funding. She stated it was a labor of love but unfortunately an expensive labor of love. **Ms. Shirley** explained the differences between her organization and of Cantor. Cantor specializes in taking a sound horse and getting them retrained and adopting them out. Equine Encore Foundation takes the old campaigners that had been successful at the race track but could no longer go on and race or go into another occupation, so they provide a permanent retirement for them and it is quite expensive and it requires a lot of overhead. **Ms. Shirley** expressed her appreciation.

Chair Owens asked for approval of the grants to each of the organizations. She called for a motion to move the grant for \$1,350 to go to Greyhound Pets of Arizona.

Commissioner Goree moved the motion. **Commissioner McClintock** seconded the motion. Motion carried.

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Chair Owens called for a motion to move the grant for \$977.50 to go to Cantor of Arizona in the amount of \$977.50 **Vice Chair McClintock** moved the motion. **Commissioner Goree'** seconded the motion. Motion carried.

Chair Owens called for a motion to move the grant for \$977.50 to go to Equine Encore Foundation **Vice Chair McClintock** moved the motion. **Commissioner Goree'** seconded the motion. Motion carried.

Chair Owens congratulated the organizations and thanked them for their hard work and their support of the retired athletes.

C. Information Reports

1. Senate Bill 1282(racing omnibus)

Chair Owens requested Director Walsh to give his report on Senate Bill 1282.

Director Walsh reported that Senate Bill 1282 had been passed and signed into law by Governor Jan Brewer on May 5, 2014. He stated the major issue had been the approval and legalization of Advanced Deposit Wagering. He stated the Department has appointed an internal committee that will meet on June 13th to begin writing the rules that are necessary to implement SB 1282 and plan to get it implemented as soon as possible. He explained the Department has an exemption to the rulemaking process, meaning that when the rules are finally written they can be delivered to the Secretary of State's office and the rules will take effect on the date they are delivered. Turf Paradise indicated they would like to see it up and running by the opening of the meet in October. **Director Walsh** stated that he had asked Turf and the other stakeholders to submit anything that they felt should be in the rules. **Director Walsh** said they have been looking at different rules from around the country and it seemed like every state had its own set of issues. **Director Walsh** said he is looking forward to having Advanced Deposit Wagering up and running soon. **Director Walsh** further explained the greyhound injury reports were included in the law and at the last second an amendment had gone into the bill and expanded the injury report. **Director Walsh** stated he was able to remove one problem from the bill, and one of the legislators was not inclined to remove anything else, and he was not going to allow the bill as a whole to move forward without that matter included in it. He said a standard report will be created, it will be time consuming and a little bit more work for the Department but assignments in the Department have already been made to prepare and develop the report. **Director Walsh** explained the third portion of the bill that didn't make it into law was the one million two hundred thousand dollars that was set aside for the breeders industry and for the state and county fairs. Governor Brewer line item vetoed that money out of the bill, she could take out any part of the bill that had to do with money and she did not want to take more money out of the general fund. Her office is devoting every single dollar towards fixing the child welfare problem.

Chair Owens asked Director Walsh about some small amount of appropriated funds for the breeders.

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Director Walsh explained that two hundred and fifty thousand dollars was not lost, it was part of the budget and would continue as in the last two years. The one million two hundred thousand dollars that did not make it would have been a nice little addition. He mentioned that a lot of people had been looking forward to the extra funding, both the breeders and some of the County Fair people had already indicated they were ready to get started but unfortunately it did not work out that way.

Chair Owens asked Director Walsh what he meant by going ahead and trying again next year.

Director Walsh replied he meant everybody getting together the way they did this past year. He felt they had banded together very well. He explained the money had made its way straight to the Governor's desk.

2. Permittee Reports

- a. American Greyhound Racing – Nothing to Report
- b. County Fairs – Loretta Brashier – Sonoita County Fair, reported they had a great turnout for Kentucky Derby Day. It was their 99th year and they vowed to make it to their 100th. Sonoita runs on volunteers and sponsor money and they did a fantastic job.
- c. Rillito Park – **Patti Shirley** – Rillito Park is still trying hard to stay open, but the county has other plans. The county would like to place soccer fields where the track is. Currently the county has plans to begin tearing down the barns. The county said Rillito can race during the 2015 season, but the bond election will be the turning point on the survival of Rillito Park's Racing.
- d. Tucson Greyhound Park – **Dale Popp, General Manager**, reported they were making the adjustments to be in compliance with SB 1281. He did not feel it was going to be any major issue and they were doing things based on the suggestions of the Commission. He said they are making sure the track surface is safe for the dogs.

Director Walsh stated he had just been at the track in Tucson and that he, Mr. Popp and his staff worked on injury reports along with a number of other things and they were very cooperative which he appreciated.

- e. Turf Paradise – **Vince Francia, General Manager**, reported that the Turf Paradise meet ended the day after Kentucky Derby Day. He said they were up 2% on the all sources handle, they had a 6% increase in attendance Kentucky Derby Day being their biggest day. The next meet will start October 18, 2014 and run through May 15, 2015, which will be 144 days. Most of the schedule is Saturday through Wednesday racing, but there will be ten Fridays. They have hired Steve Saxton, a former chairman and president of Church Hill Downs to help them with the new Advanced Deposit Wagering since he is an expert in the field. On September 20th and October 3rd they will be trials and finals for the Quarter Horses. He reported they are doing 150 capitol improvement projects. The biggest project are the water lines in the stable area. He mentioned the success of Weinermania and the crowds it drew into the track and they would like to do it again.

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Commissioner Goree thanked Mr. Francia for holding the Weinermania races at Turf Paradise. He reported the event helped out Arizona Adopt a Greyhound in placing some of their retirees.

3. Optional Industry Stakeholder Association Updates

- a. Arizona Greyhound Association– Nothing to report
- b. Arizona Quarter Racing Association – **Loretta Brasier** reported she was working on a newsletter to stay in touch with everyone during the summer. She was pleased with each of the meets, Turf, Rillito and Sonoita. She was hopeful for some summer racing.
- c. Arizona Thoroughbred Breeders Association – nothing to report
- d. Horsemen's Benevolent & Protective Association – nothing to report
- e. Jockey's Guild – no one representing to report

D. Commission Reports:

Chair Owens asked if there were anything else to discuss or act upon or if there were any future agenda items aside from the hearing.

Director Walsh stated that there were some permit issues that would be on the July agenda. Director Walsh brought up the fact that there was not a scheduled meeting for July but if we stayed consistent with the second Wednesday of the month, July 9th would be the next time we would meet. He mentioned having several issues that he would like to bring up at that time.

Chair Owens asked Director Walsh if he had been able to attend the ARCI annual meeting in April.

Director Walsh replied he had not been able to attend, but Commissioner **Goree** did attend the meeting on the Commissions behalf. Director Walsh asked Commissioner **Goree** if he would like to make a presentation.

Commissioner Goree reported that he had attended several of the committee meetings specifically involving the greyhounds and there had been a lot of conversation about injury reports. He said the committees agreed to work on coming up with some type of a standardized reporting system that could be used nationwide, since currently there is not a standardized report system. At present there is work going on behind the scenes with a few people trying to come up with something for future use.

Director Walsh stated that RCI is going to have its meeting in California at the very end of July and if anybody were interested to let him know so reservations could be made, due to the time of year and the difficulty getting accommodations.

Vice Chair McClintock asked if there was an update for Prescott Valley.

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Director Walsh stated he received an email from Gary Miller the morning of the Commission meeting and the email stated that he was officially withdrawing his application. The application had been sitting there for 14 to 15 months. The Department is planning to refund the balance of the funds. Director Walsh was uncertain to Mr. Miller's plans for the future and that Mr. Miller still owns the facility.

Chair Owens opened the floor for the Call to the Public. No one had signed up to speak. Chair Owens announced the next meeting will be held on July 9, 2014. She called for a motion to adjourn.

Director Walsh asked if a schedule could be agreed upon for next year's Commission Meetings and if continuing to meet on Wednesdays would work for everyone.

Chair Owens responded that Wednesdays worked for her and asked if that would work for everyone.

Vice Chair McClintock was in agreement.

Chair Owens asked if anyone had any thoughts or concerns.

Patti Shirley mentioned her concern because Wednesdays are race days.

Director Walsh replied that issue had been brought up in the past and he had not really seen the schedule but he knew some Wednesdays would be involved, but some Wednesdays wouldn't have racing because those weeks would have Friday as a race day. He agreed that it would be best to meet on a non-race day.

Chair Owens was in agreement to move it to a non-racing day.

Director Walsh stated the only other day would be on a Thursday. He said a schedule would be developed and presented at the July 9th meeting.

Chair Owens thanked Director Walsh for looking into creating a new meeting schedule. She called for a motion to adjourn. **Vice Chair McClintock** moved the motion. **Chair Owens** seconded the motion. The motion carried.

This public meeting adjourned 11:08 AM
Dated this 9TH Day of July, 2014

Arizona Racing Commission
By 
Victoria Huguenard, Administrative Assistant